American Medical Response of Southern California *and* United EMS Workers, AFSCME Local 4911. Cases 21–CA–231607, 21–CA–234727, and 21–CA–237016

December 10, 2020

DECISION AND ORDER

BY MEMBERS KAPLAN, EMANUEL, AND MCFERRAN

On January 31, 2020, Administrative Law Judge Dickie Montemayor issued the attached decision. The Respondent filed exceptions and a supporting brief, the General Counsel filed an answering brief, which the Charging Party Union joined, and the Respondent filed a reply brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, to amend the remedy, and to adopt the recommended Order as modified and set forth in full below.[2]

We adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act by directing employees to remove and not to wear several union-provided buttons.[3] As an initial matter, the judge found, and the Respondent does not dispute, that the buttons bearing the messages "Fair Contract Now," "Hey, we sent everything over. Did you get it?," and "No on Prop 11" constitute protected union insignia. As such, the Respondent's ban on employees wearing these buttons is presumptively invalid in the absence of special circumstances.[4] See *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945); see also *USF Red Star, Inc.*, 339 NLRB 389, 391 (2003).

It is the employer's burden to prove the existence of special circumstances justifying a prohibition on employees' Section 7 right to wear union insignia in the workplace. See, e.g., *Meijer, Inc*., 318 NLRB 50, 51 (1995), enfd. 130 F.3d 1209 (6th Cir. 1997). In addition, the Board has made clear that an employer's ban or prohibition on union insignia must be narrowly tailored and not extend beyond the special circumstances justifying the ban or prohibition. See *USF Red Star, Inc.*, 339 NLRB at 391; see also *Boch Honda*, 362 NLRB 706, 707–708 (2015), enfd. 826 F.3d 558 (1st Cir. 2016).

Here, the Respondent asserts that the ban on the buttons is justified by concerns for patient safety and its public image. As the judge found, however, the Respondent directed employees to remove the buttons even when they were in nonpublic areas and were not interacting with patients or the public.[5] Thus, even assuming the special circumstances identified by the Respondent could justify a more tailored restriction on the employees' right to wear the union buttons at issue, the prohibition here extends beyond those circumstances to prohibit employees from wearing such buttons even in situations where patient safety and public image concerns would not be present. See *USF Red Star*, supra.[6] We thus agree with the judge

[1] We deny the Respondent's motion to consolidate this proceeding with *American Medical Response West*, 370 NLRB No. 58 (2020). We also deny the Respondent's request for oral argument as the record, exceptions, and briefs adequately present the issues and the positions of the parties.

[2] We have amended the judge's recommended remedy to conform to the Board's standard remedial language, and modified the judge's recommended Order to conform to the amended remedy and the Board's standard remedial language, and in accordance with our recent decision in *Danbury Ambulance Service, Inc.*, 369 NLRB No. 68 (2020). We shall substitute a new notice to conform to the Order as modified.

[3] The General Counsel did not allege in the complaint that the Respondent's maintenance of its policy on the wearing of buttons in its "Uniforms/Hygiene Operational Guideline" was unlawful.

[4] We thus reject the Respondent's argument that the judge erred in applying the special circumstances test rather than the test articulated in *Boeing Co.*, 365 NLRB No. 154 (2017). See *Wal-Mart Stores, Inc.*, 368 NLRB No. 146, slip op. at 2–3 and fns. 10 and 13 (2019) (discussing application of the two frameworks). In doing so, we do not rely on the judge's characterization of the Board's decision in *Wal-Mart Stores*.

We also find it unnecessary to pass on the Respondent's argument that the Board should extend to ambulance companies the presumption of validity, created in the healthcare facility setting, for employer restrictions on nonofficial insignia in immediate patient care areas. See, e.g., *Healthbridge Mgmt.*, 360 NLRB 937, 938 (2014), enfd. 798 F.3d 1059 (D.C. Cir. 2015); see also *NLRB v. Baptist Hospital*, 442 U.S. 773, 781 (1979). Even if this presumption were to apply to the Respondent's operations, the Respondent's button ban would nevertheless be unlawful because, as discussed below, it is overbroad and applies even when employees are at their deployment center and not interacting with patients or the public. We do not rely on *Alert Medical Transport*, 276 NLRB 631 (1985), and *Metro-West Ambulance Services, Inc.*, 360 NLRB 1029 (2014), cited by the judge in discussing this presumption, in which the Board adopted the judges' findings pertaining to bans on the wearing of union insignia in the absence of exceptions.

Member Emanuel would analogize the transportation of patients in an ambulance to the immediate patient care areas of a hospital and find that bans on wearing union insignia at those times are presumptively valid. Nonetheless, he agrees with his colleagues that the Respondent's ban is still unlawfully overbroad because the Respondent applied it to employees while they did not have contact with patients or the public.

[5] As relevant here, the judge found that, on several occasions, the Respondent directed employees to remove their union buttons while they were in the South Deployment Station and not interacting with patients or the public.

[6] Member McFerran notes that even if the Respondent's prohibition on the union buttons was narrowly tailored to times when employees were interacting with patients or the public, she would nevertheless find it unlawful because the Respondent has not established special circumstances justifying such a prohibition.

that the Respondent's ban was overbroad and violated Section 8(a)(1).[7]

AMENDED REMEDY

Having found that the Respondent engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, the Respondent shall cease and desist from prohibiting employees from engaging in protected concerted activity by directing them to remove and not to wear union-provided buttons. The Respondent shall also post an appropriate remedial notice to employees.

ORDER

The National Labor Relations Board orders that the Respondent, American Medical Response of Southern California, Riverside, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from engaging in protected concerted activity by directing them to remove and not to wear union-provided buttons.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its Riverside, California facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, notices shall be distributed electronically, such as by email, posting on an intranet or internet site, and/or other electronic means, if the Respondent customarily communicates with its employees by such means. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former employees employed by the Respondent at any time since October 1, 2018.

(b) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 10, 2020

Marvin E. Kaplan, Member

William J. Emanuel, Member

Lauren McFerran, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

[7] In its exceptions, the Respondent challenges the judge's finding that its button prohibition is overbroad. The Respondent appears to contend that a total ban on the buttons is appropriate because employees spend most of their time outside the view of management and thus there is no way for management to ensure they remove the buttons before interacting with patients and because it would be onerous for employees to remove the banned buttons before interacting with patients. The Board has rejected both of these arguments in prior cases and we do so here as well. See, e.g., *Long Beach Memorial Medical Center, Inc. d/b/a Long Beach Memorial Medical Center & Miller Children's and Women's Hospital Long Beach*, 366 NLRB No. 66, slip op. at 4 (2018), enfd. 774 Fed. Appx. 1 (D.C. Cir. 2019); *Enloe Medical Center*, 345 NLRB 874, 876 (2005).

Member Emanuel dissented in part in *Long Beach Memorial Medical Center* because he found that one of the rules in that case "would be understood to only apply in immediate patient care areas," but he agrees that this is not the case with respect to the Respondent's ban at issue here. 366 NLRB No. 66, slip op. at 5 (Member Emanuel, dissenting in part).

[8] If the facility involved in these proceedings is open and staffed by a substantial complement of employees, the notices must be posted within 14 days after service by the Region. If the facility involved in these proceedings is closed due to the Coronavirus Disease 2019 (COVID-19) pandemic, the notices must be posted within 14 days after the facility reopens and a substantial complement of employees have returned to work, and the notices may not be posted until a substantial complement of employees have returned to work. Any delay in the physical posting of paper notices also applies to the electronic distribution of the notice if the Respondent customarily communicates with its employees by electronic means. If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted By Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT prohibit you from engaging in protected concerted activity by directing you to remove and not to wear union-provided buttons.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights listed above.

AMERICAN MEDICAL RESPONSE OF SOUTHERN CALIFORNIA

The Board's decision can be found at www.nlrb.gov/case/21-CA-231607 or by using the QR code below. Alternately, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

Phuong Do, Esq., and *Lisa McNeill, Esq.*, for the General Counsel.

Daniel F. Fears, Esq. (Payne & Fears LLP), for the Respondent.

Christina L. Adams, Esq. (Weinberg, Roger & Rosenfeld), for the Charging Party.

DECISION

STATEMENT OF THE CASE

DICKIE MONTEMAYOR, Administrative Law Judge. This case was tried before me on May 20, 2019, in Los Angeles, California. Charging Party filed charges alleging violations by American Medical Response of Southern California (Respondent) of Section 8(a)(1) of the National Labor Relations Act (the Act). Respondent filed an answer denying that it violated the Act. The parties were given full opportunity to participate, to introduce relevant evidence, to examine and cross-examine witnesses, and to file briefs. I carefully observed the demeanor of witnesses as they testified, and I rely on those observations here. I have studied the whole record, including the post-hearing briefs and based upon the detailed findings and analysis below, I conclude that Respondent violated the Act essentially as alleged.

FINDINGS OF FACT

JURISDICTION

The complaint alleges and I find:

1. (a) At all material times, Respondent, was a California Corporation with multiple business locations in the State of California and a business location at 879 Marlborough Avenue in Riverside, California, and engaged in providing ambulance services.

(b) In conducting its operations during the 12-month period ending October 31, 2018, Respondent derived gross revenues in excess of $500,000.

(c) In conducting its operations during the 12-month period ending October 31, 2018, Respondent purchased and received at its Riverside, California facility goods valued in excess of $50,000 directly from points outside the State of California.

(d) At all material times, Respondent has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

(e) At all material times, the United Emergency Medical Workers, American Federation of State, County, and Municipal Employees (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

2. At all material times, the following individuals held the positions set forth opposite their respective names and have been supervisors of Respondent within the meaning of Section 2(11) of the Act and agents of Respondent within the meaning of Section 2(13) of the Act.

Nicolas Amsler-	Operations Supervisor
David Olguin-	Operations Manager
John Parsons-	Field Supervisor
Mike Moore-	Operations Supervisor

A. Background

Respondent is an ambulance service company that employs approximately 470 paramedics and EMTs in Riverside County, California. The paramedics and EMTs whose shifts can run either 12 or 24 hours respond to emergencies from wherever they are posted which can vary from a street location, one of two main stations, the North Deployment Station, the Menifee Deployment station or one of several smaller substations located in Canyon Lake, Lake Elsinore, and North Perris. The stations all serve as primary support facilities and provide general living quarters, rest areas, break rooms, kitchens, and sleeping quarters. The stations however do not ordinarily serve as facilities where injured or ill persons are treated.

The typical workday for the paramedics and EMTs can be broken down into four distinct categories of daily activities: (1) waiting for calls at the location they are stationed, (2) driving in the ambulance responding to calls, (3) upon arrival to the call, providing emergency treatment and if necessary, (4) transporting the ill or injured person to a hospital facility. During each of the distinct categories of activities employees have differing degrees of interactions with the public at large. While waiting for calls, especially if located at one of the various stations, the paramedics

and EMTs routinely interact with coworkers and supervisors who are also assigned to the particular location but not ordinarily interact with the public. Upon arrival to a call and both during and after transporting the injured person, the paramedics and EMT's routinely encounter and interact with members of the public, including not only those being treated but others including family members and others who might be present on the scene. Although the ordinary workday can vary, the paramedics and EMTs can spend up to two thirds of the day (sometimes more sometimes less) waiting for calls at their respective stations. In a 24-hour shift, this means that of the 24 hours on duty it is not unusual that they are at the station interacting with coworkers and supervisors for 16 out of the 24 work hours. (Tr. 112.)

B. Respondent's Button Policy

Respondent and the Union were signatories to a collective-bargaining agreement (CBA) which was in effect from July 1, 2015, through December 31, 2018. (GC Exh. 2.) Although the collective-bargaining agreement requires the wearing of a company standard uniform it was silent as to the issue of union insignia or buttons. Instead the Company regulated the wearing of buttons through a policy referred to as the "Uniforms/Hygiene Operational Guideline." The policy in general set forth requirements for both mandatory and optional uniform items as well as specific hygiene requirements such as the use of "fragrance free" deodorant. The Mandatory Uniform section of the guidelines specifically provides that a standard AMR round patch must be worn and that "no other insignia, flags, patches, badges, or buttons are to be worn, except as *issued by the company* or allowed under a collective bargaining environment." (GC Exh. 15.) (Emphasis in original.) Respondent construed its own policy to allow the wearing of a standard "union lapel pin" that denotes the shield or crest of the local or international Union. (Tr. 80.)

In October of 2018, Respondent officials Aaron Nupp in consultation with Respondent's labor relations officials Dave Banelli, vice president of labor relations, and Ann Mogul director of labor relations, determined that it was not appropriate for employees to wear "campaign style buttons" and although union lapel pins were authorized by past practice "any other type of messaging" was not acceptable. (Tr. 82.) The ban on "any other type of messaging" was not the result of any patient or other person complaining about the buttons or any safety concerns. (Tr. 108.). The reasoning offered by Respondent for the ban was that the buttons detract from patient care and didn't "present a consistent message of "we're here for the patient." (Tr. 81.) The reasoning for the ban on information presented in the buttons was also described as follows: (1) It could be one-sided,[1] (2) It could be incorrect information, (3) It could cast the company or the organization in a negative light, (4) The buttons "created an environment where the—the public believes that the organization is less than . . . a reputable standup company that takes care of its community, its citizens, as well as its employees." (Tr. 427.)

C. The Alleged Unfair Labor Practices

1. The October 2018 incident at the Inland Valley Medical Center (Complaint par. 6).

Christian Dykstra, a paramedic who had been employed with Respondent for a period of 11 years, testified that in October of 2018, for a period of approximately 1 or 2 weeks, he wore a small 1.25 inch round union button with the language "Fair Contract Now" displayed on the button. The button also contained the image of the "Star of Life" and two hands shaking, the standard logo of the union local. (GC Exh. 5, Tr. 163.) The button was a typical safety pin type and was worn on Dykstra's right chest.

Sometime in October of 2018, Dykstra dropped off a patient at the Inland Valley Medical Center. At the time, he was wearing the "Fair Contract Now Button" and while in front of the ER was approached by Nicolas Amsler, the operations supervisor. Amsler directed him to remove the "Fair Contract Now" button and further advised that David Olguin had directed him to ask the employees to remove the button. (Tr. 166.) Dykstra thereafter removed the button. (Tr. 170.)

2. The October 23, 2018 Incident at Respondent's South Deployment Station in Menifee, California. (Complaint par. 7).

Among the items California voters were called to vote upon in 2018 was Proposition 11(Prop 11), a provision which would amend the labor code and addressed issues related specifically to Emergency Ambulance Services. Among the changes included in the proposed initiative were specific changes to the laws surrounding meal and rest periods for emergency ambulance employees. (GC Exh. 8.) The proposal was supported by and directly funded by Respondent. Nick Amsler, the operations supervisor appeared in television and campaign materials. The union opposed the initiative and published its own information advocating its opposing position. The union also created a "NO on PROP 11" button which was a round 2¼ inch button with the image of an ambulance and the union local information. (GC Exh. 7.)

On or about October 23, 2018, Richard Rodriguez, a paramedic employed for approximately 11-1/2 years was wearing a "NO on PROP 11" button while he was present in the south deployment station. He was approached by Nicolas Amsler (the same operations supervisor who was publicly advocating for the passage of Proposition 11) who asked him to remove his button. Rodriguez promptly removed it as requested. (Tr. 236, 238.)

3. The February 14, 2019 incident at Riverside University Health System Medical Center (Complaint par. 8)

Jorel Sales, was an EMT who worked for AMR for a period of 3-1/2 years. On February 14, 2019, he was at the Riverside University Health System Medical Center waiting with a patient for a bed and as wearing a union button which was meant to

[1] In *Walmart*, 368 NLRB No. 146 (2019), the Board (applying a newly imagined standard not directly applicable to the facts of this case) observed that the whole point in wearing buttons is to communicate a message and, if protected by the Act, the restriction of that message can be construed as an admission by the employer to interfere with Sec. 7 activity. Respondent's admission of a purpose to interfere with Section 7 rights is readily gleaned from the very rationale it provided for its actions.

resemble a text message with the words "Hey, we sent everything over. Did you get it?" and three dots commonly known as the text message typing awareness indicator. (GC Exh. 9.) He was approached by Josh Parsons, field supervisor, and asked to remove the button and he promptly complied. (Tr. 355.)

4. The February 24, 2019 incident at Respondent's South Deployment Station in Menifee, California (Complaint par. 9)

Joseph Gunton, a paramedic who had worked for Respondent for approximately 10 years was wearing the "Hey we sent everything over. Did you get it?" button while at the South Deployment Station on February 24, 2019. (GC Exh. 9.) In his view, the button represented what he perceived as Respondent's delay in responding to the Union's bargaining proposals. He was approached by operations supervisor, Mike Moore while sitting at a desk at the station. He and EMT Richie Alleva (who was also wearing the same button) were told by Moore that they couldn't wear the buttons. Gunton removed the button immediately. (Tr. 370–372.) No patients or members of the public were present during this conversation. (Tr. 372.)

5. The February 25, 2019 incident at Respondent's South Deployment Station in Menifee, California. (Complaint par. 10).

EMT Joel Sales in late February 2019, while at the South Deployment Station was wearing the "Hey, we sent everything over. Did you get it?" button. Toward the end of his shift he was approached by supervisor Moore who told Sales to remove the button. Sales complied. (Tr. 305, 306.) No members of the public or patients were present during this conversation. (Tr. 306.)

Analysis

It is well settled that an employer violates Section 8(a)(1) when it prohibits employees from wearing union insignia at the workplace, absent special circumstances. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793, 801–803 (1945); *Ohio Masonic Home*, 205 NLRB 357, 357 (1973), enfd. mem. 511 F.2d 527 (6th Cir. 1975). "The Board has found special circumstances justifying proscription of union insignia and apparel when their display may jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image that the employer has established, as part of its business plan, through appearance rules for its employees." *Bell-Atlantic-Pennsylvania*, 339 NLRB 1084, 1086 (2003), enfd. *Communications Workers of America, Local 13000 v. NLRB*, 99 Fed.Appx. 233 (D.C. Cir. 2004). However, a rule that curtails employees' Section 7 right to wear union insignia in the workplace must be narrowly tailored to the special circumstances justifying maintenance of the rule, and the employer bears the burden of proving such special circumstances. See *W San Diego*, 348 NLRB 372, 373, 374 (2006) (special circumstances that justified employer's ban on buttons worn in public areas did not justify the ban on buttons worn in nonpublic areas).[2]

Moreover, any such prohibition that infringes upon employees' Section 7 right is presumptively invalid and the employer, in order to meet its burden, cannot rely on mere speculation, conjecture or conclusory assertions. *Mt Clemens General Hospital*, 335 NLRB 48 (2001), enfd. 328 F. 3d 837 (6th Cir. 2003) (testimony by a hospital official that a union button could cause possible disruptions, absent evidence of complaints from patients or their families not sufficient evidence to establish special circumstances); *St. Luke's Hospital*, 314 NLRB 434 (1994) (respondent's contention that patients might be upset by a union button, without any evidence, such as patient complaints to support the supposition not sufficient to establish special circumstances); see also *Healthbridge Management*, 360 NLRB 937 (2014).

Applying the legal principles set forth above to the facts presented, I find that the Respondent's broad proscription openly curtails employees' Section 7 right to wear protected union insignia. As such, it is overly broad. *P.S.K. Supermarkets*, 349 NLRB 34, 34–35 (2007). Furthermore, regarding the "No on Prop 11" buttons, the evidence is undisputed that the buttons shared a direct nexus to the terms and conditions of employment of the employees. Prop 11 was designed to address whether employees should be compensated for not receiving breaks during their shifts. As such, the button was also protected union insignia. *Eastex, Inc., v. NLRB*, 437 U.S. 556 (1978), *AT&T*, 362 NLRB 885 (2015).[3]

Respondent has failed to meet its burden to establish that "special circumstances" existed to justify restricting employees Section 7 rights. Respondent's broad proscription against the wearing of the buttons was not in any sense narrowly tailored to any special circumstance which would lawfully justify maintenance of the rule. On the contrary, Respondent's rule drew no distinctions whatsoever regarding, time or place nor did it draw any distinctions between public and nonpublic areas. Nor did it draw distinctions between whether the button was worn while in contact with prospective patients, in an emergency room or hospital setting or while at the station or in the ambulance. The evidence established that the employees were told to remove buttons

[2] Respondent argued that restrictions on "Patient-Facing" medical positions were presumptively valid relying on the "healthcare presumption." See *USC University Hospital and National Union of Healthcare Workers*, 358 NLRB 1205 (2012) (holding that a hospital could prohibit union insignia in "immediate patient care" areas and that such rules are presumptively valid). I am not persuaded by Respondent's "Patient Facing" argument. The Board and the courts have consistently reiterated that even in a hospital setting, the prohibition of union insignia in nonpatient care areas is presumptively invalid. *Mesa Vista Hospital*, 280 NLRB 298 (1986), *North Memorial Health Care,* 364 NLRB No. 6 (2017), enfd. 860 F. 3d 639. Respondent's assertion that "Patient Facing" employees job duties somehow automatically trigger the "healthcare presumption" is misplaced because it ignores the fact that two thirds or more of the employee's time at work is generally spent without any public contact whatsoever and away from any hospital and or patient setting whatsoever. The evidence is also undisputed that Respondent did not in any way attempt narrowly tailor of limit its ban to patient treatment areas but instead implemented a total prohibition of the buttons and employees were asked to remove them regardless of location. It should also be noted that the Board has not determined that the "healthcare presumption" applies to ambulance/transportation companies. See *Alert Medical Transport*, 276 NLRB 631 (1985), *Metro-West Ambulance Services,* 360 NLRB 1029 (2014).

[3] It should be noted that a similar result was reached regarding the "No on Prop 11" issue in AMR West, 20–CA–229397, 20–CA–229699, 20–CA–230007, JD-SF-41-19 (Dec. 6, 2019).

regardless of the location where they were encountered and regardless of what functions they were performing.

In other respects, I find no credible evidence in the record to establish that the wearing of any of the buttons did or foreseeably would adversely affect the Respondent's business in any way. See *Register Guard*, 351 NLRB 1110 (2007). There is also no evidence in the record from which to conclude that the buttons would jeopardize employee safety, damage machinery or products, exacerbate employee dissension, or unreasonably interfere with a public image. In fact, there was no evidence that any single person ever even complained about the buttons. The buttons which are the subject of General Counsel's complaint do not demean, impugn, or disparage Respondent's business in any way. The notion that the buttons would cause the public to, "believe that the organization is less than . . . we hold ourselves to be" somehow justifying an exception to the general rule is unsubstantiated and based upon mere speculation and/or conjecture. This is especially true given the fact that for up to two thirds of the time while at work employees have no contact whatsoever with the public.

The record does not establish any special circumstance which would justify an exception to the rule that employees generally have a Section 7 right to wear buttons with messages related to a union or to terms and conditions of employment. Therefore, I conclude that Respondent has not carried its burden. *United Parcel Service*, 312 NLRB 596 (1993).

Accordingly, I recommend that the Board find that the Respondent violated Section 8(a)(1) of the Act by prohibiting the wearing of all buttons and insignia except for the buttons it approved or required, and by instructing employees to remove the "Fair Contract Now "No On Prop 11" and the "Hey, we sent everything over. Did you get it?" buttons, the messages of which related to a term or condition of employment and the wearing of which was protected by the Act.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The United Emergency Medical Workers, American Federation of State, County, and Municipal Employees (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

3. The above unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) of the Act.

4. By prohibiting employees from wearing "Fair Contract Now" "No on Prop 11," and the "Hey, we sent everything over. Did you get it?" buttons, Respondent violated Section 8(a)(1) of the Act, and has interfered with, restrained, and coerced employees in the exercise of their Section 7 rights. The Respondent further violated Section 8(a)(1) of the Act by enforcing this prohibition, and by directing employees to remove buttons.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

1. Respondent shall therefore rescind the unlawful prohibition.

2. If Respondent maintains records of any instructions it gives to employees for violations of its button policy, I recommend that the Board order the Respondent to remove from its records any reference to the instruction it gave any employee to remove any of the above-referenced buttons.

3. Respondent shall post the notice to employees attached to this as "Appendix."

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

ORDER

The Respondent, American Medical Response of Southern California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Prohibiting employees from wearing, while on duty, any button or insignia apart from those it has approved, and that makes no exception for buttons or insignia pertaining to wages, hours, terms and conditions of employment or union or other protected activities and specifically the Fair Contract Now," No on Prop 11," and the "Hey, we sent everything over. Did you get it?" buttons.

(b) Directing employees to remove from their clothing any button or insignia pertaining to wages, hours, terms and conditions of employment or union, or other protected activities and specifically the Fair Contract Now," No on Prop 11," and the "Hey, we sent everything over. Did you get it?" buttons.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the prohibition from wearing any button or insignia without making an exception for buttons or insignia pertaining to wages, hours, terms and conditions of employment or union, or other protected activities including the prohibition related to the "Fair Contract Now," No on Prop 11," and the "Hey, we sent everything over. Did you get it?" buttons.

(b) Within 14 days after service by the Region, post at its facility in Riverside, California, copies of the attached notice marked "Appendix." Copies of the notices, on forms provided by the Regional Director for Region 21, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an internet or intranet site, and/or by other electronic means, if the Respondent customarily communicates with its employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. If the Respondent has gone out

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice marked "Appendix" to all current and former employees employed by the Respondent at that facility at any time since October 1, 2018.

(c) Within 21 days after service by the Region, file with the Regional Director for Region 21 a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. January 31, 2020

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT do anything to prevent you from exercising the above rights.

WE WILL NOT prohibit our employees from wearing, while on duty, any button or insignia pertaining to wages, hours, terms and conditions of employment or union or other protected activities and specifically the "Fair Contract Now," "No on Prop 11," and the "Hey, we sent everything over. Did you get it?" buttons.

WE WILL NOT direct employees to remove from their clothing any button or insignia pertaining to wages, hours, terms and conditions of employment or union, or other protected activities and specifically the Fair Contract Now," No on Prop 11," and the "Hey, we sent everything over. Did you get it?" buttons.

WE WILL NOT in any like or related manner interfere with your rights under Section 7 of the Act.

AMERICAN MEDICAL RESPONSE OF SOUTHERN CALIFORNIA

The Administrative Law Judge's decision can be found at https://www.nlrb.gov/case/21-CA-231607 or by using the OQ code below. Alternatively, can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.